

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA**

**MISC. LAND APPLICATION NO. 82 OF 2022**

**THE REGISTERED TRUSTEES OF THE EVANGELISTIC  
ASSEMBLIES OF GOD (TANZANIA) .....APPLICANT**

**VERSUS**

**KASSIM MATONYA**

**KIBAIGWA AUCTION MART**

**AND COMPANY LTD**

**BERNARD KAALI**

**.....RESPONDENTS**

**(Arising from the Order of the District Land and Housing Tribunal, Dodoma)**

**In**

**Land Application No.117 of 2009 and Land Application No. 240 of 2022**

.....

**RULING**

**20<sup>th</sup> April&2<sup>nd</sup> June,2023**

**MDEMU, J:.**

This is an application for revision of the order of the District Land and Housing Tribunal (the DLHT) in Land Application No. 117 of 2009 and Land Application No. 240 of 2022. The application is by way of chamber summons preferred under the provisions of section 43 (1)(a) and (b) of the Land Disputes Courts Act, Cap.216, section 68(e) and 95 of the Civil Procedure Code, Cap. 33 R.E 2019 and is supported by the affidavit of one Magnus Said

Sweddy. The main grounds of complaint are for this court to intervene through revision following impropriateness and illegalities in the conduct of execution proceedings.

Brief facts of the case are that, on 24<sup>th</sup> June, 2009, the third Respondent instituted Land Application No. 117/2009 against the first Respondent for recovery of land in plot No. 4 Block 'B' Miyuji North in Dodoma. Upon full trial, the DLHT decided in favour of third Respondent since he was the first to purchase the disputed land on 18<sup>th</sup> October, 1988 whereas the first Respondent purchased the same on 12<sup>th</sup> March, 1992. On 23<sup>rd</sup> of May, 2022, the third Respondent, being the decree holder, filed an application for execution which was registered as Miscellaneous Application No. 240 of 2022. The application was not objected by the first Respondent. Therefore, on 16<sup>th</sup> August 2022, the application was granted with an order that, the first Respondent be evicted from the suit premises and the same be handed over to the third Respondent.

On the other hand, reading the affidavit in support of this application, it was deposed that, the Applicant is the legal owner of plot No. 16, Block B Miyuji North in Dodoma, and constructed a church building therein for worship, whereby members of the Church used to worship peacefully since

2002. On 06<sup>th</sup> day of September, 2022, the Applicant met a notice issued by the second Respondent that, by the order of the DLHT, the house of the third Respondent be demolished. The notice was fixed on the door of the church and not at the door of the third Respondent. The Applicant then informed the Chairperson of the DLHT for intervention. It didn't work and as a result, on 15<sup>th</sup> September 2022, the first and second Respondents demolished a church building in execution of the order in Misc. Land Application No. 240 of 2022.

It is deposed in the affidavit also that, in a decree in Land Application No. 117 of 2009, the application was dismissed but the Respondent applied for execution of that decree, an act which led to destruction of the Applicants church building. It is further deposed that, the first Respondent had a case with the Applicant registered as Land Application No. 159 of 2020. However, the case was struck out on 22<sup>nd</sup> August, 2022 for non joinder of the Commissioner for Lands as a necessary party. Following such alleged illegalities, the Applicant filed this application for revision.

On 16<sup>th</sup> March 2023, parties appeared before me arguing the application. They are Mr. Fabian Donatus representing the Applicant whereas the first, second and third Respondents were represented by Mr. Christopher

Malinga, Peter Mpanda and Ms. Witness Muhosore respectively. It was agreed that, the application be heard by way of written submissions. Both parties complied with the scheduling order.

Submitting in support of the application, Mr. Fabian stated that, it was not proper for the first Respondent who was the Respondent in Land Application No. 117 of 2009 to file an application for execution of a decree in a case which was dismissed with costs. He said that, Misc. Application No. 240 of 2022 of the DLHT of Dodoma, which was made to execute a decree in Land Application No. 117 of 2009 of Dodoma DLHT, was improperly made as the decree was inexecutable.

It was his submissions further that, for a decree to be executed in recovery of land, it should state specifically a description of the same as required by Order XX, Rule 9 of the Civil Procedure Code, Cap. 33 R.E 2019. He supported his assertion by citing the case of **Harel Mallac (Tanzania) Ltd vs. Junaco (T) Limited and Dar es salaam Water and Sewage Corporation Ltd**, Commercial Case No 159 of 2014 (unreported).

He argued further that, orders made in Misc. Application No. 240 of 2022 are inconformity with orders made in a decree of Land Application No. 117 of 2009. He added that, no order of demolition of the Applicant's Church

building was issued by the DLHT. He stated therefore that, the Applicant is entitled, by way of restitution, to get from the first and second Respondents the church building which was demolished or its equivalent in the current market value. On this, he cited the case of **Josia William Mbowe vs. Ushirika wa Wauza Maziwa Korogwe and Three Others**, Land Revision No. 03 of 2020 (unreported) to support his submissions.

Furthermore, the Applicant's Advocates condemned the first Respondent's Advocate, being an officer of the Court, for dishonest in drawing the document which led to demolition of the church building which was contrary to what transpired in the case filed before the DLHT. On this, he cited the case of **Meridian Express vs. Mwananchi Insurance Co. Ltd**, Civil Appeal No. 138 of 2017 (unreported). He therefore prayed the application be allowed with costs.

In reply, the first Respondent adopted his counter affidavit and thereafter submitted that, the Applicant filed complaints against two cases which their decisions were delivered on different dates and a person aggrieved by that decision had specific time to challenge them. It was his submissions that, a decision in Land Application No. 117 of 2009 was

delivered on 24<sup>th</sup> August 2014 but the Applicant didn't challenge it on those years, rather he is challenging it after eight years since it's delivery.

On the issue of demolition, he said that, the Applicant has failed to state in his affidavit how the said order led its church to be demolished since demolition order was with regard to plot no. 4 Block B, Miyuji North where the third Respondent didn't object. He added that, the execution order was directed to the second Respondent and not the Applicant.

On the pictures which have been attached to the Applicant's affidavit, he prayed the same to be expunged as they didn't follow procedures of tendering electronic evidence as required by section 18(2) (3) and (4) of Electronic Transaction Act, Cap, 13 of 2015 read together with section 64A of the Evidence Act, Cap. 6.

The second Respondent, on his part, submitted that, he was executing legitimate orders given by the District Land and Housing Tribunal in Misc. Land Application No. 240 of 2022 in which they were ordered to evict and demolish the structure therein and to hand over vacant possession to the decree holder, the first Respondent. He submitted further that, before execution notice was issued, attachment followed then demolition. He stopped demolition following order issued by the High Court.

The third Respondent on his part submitted that, after pronouncement of the judgment in Land Application No. 117 of 2009, he never went back to the suit land since he had no interest and even after execution of decree got issued, he never disputed. The fact that the act of demolition was done by the first and second Respondent, he said, is not the one to be blamed that is why in the affidavit he has not been mentioned in relation to the demolition acts.

In rejoinder, the Applicant stated that, the application has been filed within time because it was filed immediately after the cause of action arose. He said that, the cause of action arose on 15<sup>th</sup> September, 2022 and this application was filed on 20<sup>th</sup> September 2022. He said therefore that, time started to run when the cause of action arose and not from the date the judgment was delivered.

Regarding pictures, he said, the same were attached to show how the church was destroyed. However, the issue to be determined by the Court is whether orders in Misc. Application No. 240 of 2022 are in conformity with orders made on a decree.

Responding to executing orders of the DLHT, he insisted that, the Applicant urged the Court to determine if the decree in Land Case No. 117



of 2009 made an order towards demolition of church building. He urged the Court to nullify proceedings and orders in the two impugned cases since church destruction affected its members spiritually and economically.

Having heard the parties, the contentious facts in the affidavit is on impropriateness of the proceedings. Before I proceed that far end, let the enabling provisions cited in the application be reproduced as here under:

*43.(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-*

*(a) shall, exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunals and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;*

*(b) may, in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf, by any party or of its own motion, if*



*it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit.*

*(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction.*

My understanding in the above provisions is that, in section 43(1) (a) of Cap.216, the High Court, *suo moto*, in exercise of general powers of supervision over District Land and Housing Tribunals, may call for and inspect the records of such tribunals and give directions as it considers necessary. It was wrong therefore for the Applicant to move this court under that section, the proper section was section 43(1) (b) of Cap. 216.

The question to be asked is whether the Applicant may apply for both supervisory and revisional jurisdiction of the High Court at once. In **Farida Bugozi Mikindo vs. Abigael Laban Kauga & Another [2013] T.L.R. 195**, on this procedure adopted by the Applicant, it was observed that:

*It is obvious from the contents of the chamber summons that the Applicant applied to the court to exercise both supervisory and revisional powers to grant the prayer. That is clearly not practicable. The tribunal in the decision has passed the stage which this court can exercise its supervisory jurisdiction. The case having been determined, this court can exercise only its appellate or revisional jurisdiction, subject of course to whether the decision is appealable or otherwise.*

Given this legal position, revision is exercisable where the matter has been determined. It can be done if it appears that there has been an error material to the merits of the case involving injustice. Therefore, since the proper subsection was 43(1) (b) of Cap. 216, I invoke overriding objective principle and for the interest of justice, I proceed to determine the application as if only revision orders has been sought for.

In the record, as stated earlier, Bernard Kaali the third Respondent filed a case against the first Respondent for recovery of a "shamba" plot No. 4 Block 'B' Miyuji North-Dodoma Municipality. In that case, it was the third Respondent who was declared the owner. At page 12 of the typed judgment, the trial Tribunal held as follows: -

*In those circumstances, this Tribunal enters judgment in favour of the first Respondent as follows: -*

- 1. The Applicant's Application is hereby dismissed for lack of material base.*
- 2. The Respondent is declared a legal owner of the Plot No. 4 Block B, Miyuji North-Dodoma.*
- 3. The Respondent is entitled with costs.*

On 23<sup>rd</sup> May, 2022, the third Respondent applied for execution of a decree issued in Land Application No. 117 of 2009 vide Miscellaneous Application No. 240 of 2022. In it, he prayed for the following, and I quote: -

- 4. I apply for execution of the decree in the following mode/manner:*
  - i. Vacant possession of the disputed land herein to the Decree Holder.*
  - ii. A permanent injunction order against the judgment Debtors or his agent and any other person acting under his instructions from interfering /curtailing the decree holder to enjoy his right of ownership towards the land disputes.*
  - iii. Demolition of any structure built therein.*

Thereafter the application was heard and since the Respondent didn't object, order was granted in the following manner, and I quote: -

*I have heard the submissions of both parties and since the Respondent did not object to the application, my task has been*

*simplified. It is true that the Applicant was declared the lawful owner of the suit land by this tribunal, vide land application No. 117 of 2009 by this Tribunal, the decision which has not been altered by any Court of competent jurisdiction and being the case, I proceed to grant the application as prayed save for the costs, thus the judgment debtor be evicted from the suit premise located at Plot No. 4, Block 'B' Miyuji North within Dodoma City and the same be handed over to Decree Holder.*

In the drawn Order, the Chairman ordered the following, and I quote: -

- i. That, the judgment Debtor be evicted from the suit premises located at Plot No. 4 Block 'B' Miyuji North within the city of Dodoma.*
- ii. That, the suit premise be handled over to the decree Holder.*
- iii. That, if there is any structure thereat, is ordered to be demolished.*
- iv. No costs awarded.*

Having seen what transpired in trial tribunal, during hearing and in execution processes, I have not found any irregularity complained by the Applicant. Indeed, the suit was dismissed against the third Respondent. However, it was the first Respondent in this case who applied for execution of the decree as he was the one who was declared the owner of the suit

land. Execution of the decree was in respect of Plot No. 4 'B' Miyuji North and not Plot No. 16 Block 'B' Miyuji North.

Another fact which I have noted in the application at hand is this, that there are some facts which are not stated openly as to how plot No. 16 Block 'B' comes into these two cases tried by the DLHT. It is therefore not true as deposed in paragraph 10 of the Applicants affidavit that, an order dated 16<sup>th</sup> August, 2022 in Miscellaneous Application No. 240 of 2022, was contrary to a decree in Land Application No. 117 of 2009. In the judgment of Land Application No. 117 of 2009 in which the decree was drawn thereat, at page 12, among other things, the DLHT made the following order; -

- (1) *N/A*
- (2) *The Respondent is declared a legal owner of Plot. No. 4 Block "B" Miyuji North-Dodoma*
- (3) *N/A*

The Respondent in that suit named in the order is the first Respondent in the instant application. The property subject of the order, which is also subject to this application, is Plot No. 4 Block "B" Miyuji North-Dodoma. There is nothing like Plot No. 16 Block "B" Miyuji North-Dodoma which is alleged to be the property of the Applicant herein as per the evidence in both Land Application No. 117 of 2009 and No. 240 of 2022. It is my considered views

that, the Applicant was to commence a land dispute in a "Court" of competent jurisdiction to whoever trespassed in property No. 16 Block "B" Miyuji North instead of pursuing revision seeking intervention of this Court on facts which are not and were not in the domain of both this Court and the DLHT in land Application No. 117 of 2009.

In the upshot, and in consideration of all what has been stated above, I find no merits in this revision application. I therefore dismiss this application with costs.

It is so ordered.



**Gerson J. Mdemu**  
**JUDGE**  
**02/06/2023**

**DATED at DODOMA** this 02<sup>nd</sup> day of June, 2023.



**Gerson J. Mdemu**  
**JUDGE**  
**02/06/2023**